(1) 05.5.17 5

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

MISELLANEOUS APPEAL (C) NO. - 251 OF 2006

(MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)

APPELLANTS
CLAIMANTS

1. **Smt. Bhagbati Markandey**, aged about 38 years, W/o Bhagirathi Markandey

2. **Bhagirathi Markandey**, aged about 40 years , S/o Anand Ram Markandey

Both R/o- Village – Gadikot, Tehsil – Gariyaband, District - Raipur (C.G.)

P.R. No. 3764/06
Presented by Shri S. Pandey
dated 14/12/06

VERSUS

RESPONDENTS
NON-CLAIMANTS

1. **Maheshu Ram Gaikwad** S/o Kedarnath Gaikwad, R/o- Bharega, Tehsil – Abhanpur, District – Raipur (C.G.)

2. **The Iffco-Tokio General Insurance Company Limited,** 3rd Floor, Lal Ganga Shopping Complex, G.E. Road, Raipur, District- Raipur (C.G.)

MEMORANDUM OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

MISC. APPEAL (C) NO. 256 OF 2007

APPELLANTS Smt. Bhagbati Markandey and Another

Versus

RESPONDENTS Maheshu Ram Gaikwad and Another

Present : Shri S. Pandya, counsel for the appellants.

None for the respondents.

ORAL ORDER
(Passed on 28th February, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

On 24-11-2005 Kamal Narayan (since deceased) sitting behind the driver (Hemlal) on a new motorcycle bearing Engine No.05-J-29-E-12885 and Chassis No.05-J-29-F-07368 (for short "the offending vehicle") was going to his village Godhikot. Hemlal was driving the offending vehicle. As a result of rash and negligent driving the offending vehicle collided with a tree resultantly deceased received injuries and succumbed to those. Appellants mother and father of the deceased filed an application under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act, 1988") for grant of compensation against the owner and insurer of the offending vehicle. Respondent No.1 remained ex parte whereas respondent No.2 contested the claim. 13th Additional Motor Accident Claims Tribunal (Fast Track Court), Raipur (for short "the Tribunal") after due enquiry passed the impugned award dated 28-9-2006 in claim case No.09/2006 whereby allowed a

compensation of Rs.4,70,000/- to the appellants. Feeling aggrieved the appellants have filed this appeal under Section 173 of the Act, 1988 for enhancement of the compensation.

2) Learned counsel for the appellants contended that the compensation awarded by the Tribunal is not just and reasonable.

3) We have gone through the award. Undisputedly at the time of accident the deceased was aged 18 years. No documentary legal evidence to support his income was adduced, yet the Tribunal accepted his income Rs.3,600/- per moth. The Tribunal after reducing 1/3rd towards his own expenses recorded annual dependency Rs.28,800/- and applying the multiplier of 15 assessed the loss of dependency Rs.4,32,000/-. The Tribunal further allowed Rs.15,000/- towards love & affection, Rs.20,000/- towards loss of estate and Rs.3,000/- towards funeral expenses. Amount allowed by the Tribunal not only exceeds the limit prescribed under the schedule, but also on all counts has been allowed sympathetically on a very higher side. In our opinion, the amount awarded by the Tribunal does not call for any interference for enhancement of compensation by the High Court in its appellate jurisdiction.

4) In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge